REMARKS/ARGUMENTS

Applicant responds herein to the Office Action dated April 18, 2003. A Petition for Extension of Time (three months) and the fee therefor are enclosed.

The applicant has refiled the instant application as an RCE continuation application, essentially in order to effect the amendments to claims 1 and 25, as set forth herein.

The instant amendment is further responsive to the Final Rejection dated April 18, 2003.

Furthermore, the instant amendment and communication is intended to respond to the Examiner's position taken in the aforementioned Final Rejection.

Firstly, the Examiner's comment that the applicant argued that claim 1 comprises "running a first software and determining the capacity of the computer <u>dynamically over time</u> and obtaining computer capacity data" was not contained in the claim language, is well taken. The instant amendment rectifies that situation and makes it clear that it is the "first software" which is run "dynamically over time" to obtain a constantly revised, updated and always correct indicia of the "computer capacity".

The issue is, therefore, whether Christiano '412 describes that feature of the present invention. Applicant has vehemently contended that no such disclosure is found in that reference. The Examiner, on the other hand, asserts:

> "Christiano also teaches, however, determining the environmental resource capacity using disk drive space or memory space (column 17, lines 6-9) which are capacity data well known to change dynamically over time. Further, since the invention of Christiano teaches that the requesting client includes a measure of the current capacity data (column 4, lines 41-44 and column 21, lines 34-40), it is considered <u>inherent</u> that the capacity data sent would be updated in response to any changes to the current value (i.e. dynamic)." (emphasis added).

Applicant disagrees. The foregoing represents conjecture on the part of the Patent Office about what is or is not "inherent" and/or likely or not likely to be present in the system described in Christiano. The fact is, that Christiano is absolutely silent regarding any system that runs dynamically over time to always keep an updated measure of the environmental capacity. In a

typical computer, measuring capacity might be done when software is installed and the configuration of the computer is fixed.

In effect, the applicant's system is a dynamic and automatic system that self-measures and tests for the present value of the computer capacity constantly. In the Christiano system, it appears that an operator makes that determination and fixes a scaler to indicate the value of the computer. There is no software described anywhere in Christiano which allows the license manager that is provided or the client's computer to perform the function that is being performed by the applicant's claimed "first software" (which runs and determines the capacity of the computer dynamically over time), in order to thereafter correlate that information with usage information that is repetitively obtained by the second software that is recited in the applicant's claims.

Therefore, claim 1 and all the dependent claims clearly differ from and distinguish over the prior art.

Accordingly, applicant respectfully submits that the claims of record are patentable over the prior and merit to be allowed.

Respectfully submitted,

MAX MOSKOWITZ
Registration No.: 30,576
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700